No. 91-798

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, MINNESOTA PUBLIC UTILITIES COMMISSION, and PEOPLES NATURAL GAS COMPANY, a division of UtiliCorp United Inc.,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF PRODUCER INTERVENORS IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the District of Columbia Circuit properly sustained the factual findings of the Federal Energy Regulatory Commission (the "FERC" or "Commission") based upon the proper application of state contract law.

PARTIES TO THE PROCEEDING

To supplement and correct the list of parties provided in the Petition, and in compliance with this Court's Rule 29.1, Producer-intervenors submit a complete list of their publicly traded companies, parent companies, and subsidiaries that are not wholly owned subsidiaries, in the Appendix attached hereto.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

ADMINISTRATIVE DECISIONS AND ORDERS

* These opinions are reproduced in the Appendix to the Petition For Writ of Certiorari. Citations with an "a" refer to that Appendix.

TABLE OF AUTHORITIES—Continued

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BRIEF OF PRODUCER INTERVENORS IN OPPOSITION

INTRODUCTION

This case is a paradigm for the denial of certiorari. The controversy involves no conflict among the Circuit Courts of Appeals, raises no constitutional issues, and involves no issue that will affect the future administration of a statute. Denial of the writ, therefore, is fully warranted.

The natural gas ceiling price controls upon which the controversy below was predicated have largely expired and will lapse in their entirety within the year. Indeed, this is the last third-party protest case that was before the FERC; the forty similar cases, all of which were initiated in 1979, have long since been finally adjudicated.

The challenged decision of the U.S. Court of Appeals for the D.C. Circuit ("Court of Appeals") is not in conflict with the decisions of any other circuit. The contested decision is wholly consistent with the prior decisions of the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit"), which has held that state contract law principles govern the construction of the price clauses at issue. Those principles do not enshrine any concept of "historic" intent as defined by Petitioners, but rather require courts to construe contracts based upon the parties' intent as revealed by the language of the contract, the commercial context, any relevant course of performance, and the usage of trade. *See Pennzoil Co. v. FERC*, 645 F.2d 360, 383-84 (5th Cir. 1981) (*"Pennzoil I"*), *cert. denied*, 454 U.S. 1142 (1982); *Pennzoil Co. v. FERC*, 789 F.2d 1128, 1140 (5th Cir. 1986) (*"Pennzoil II"*).

The case does not involve any substantial federal question. In affirming the orders of the FERC, the Court of Appeals did not, as Petitioners urge, *sua sponte* change the adjudicative standards from that employed by the agency below. The Court of Appeals merely provided further explication of the common law principles applicable to contract construction in the circumstances presented.

Finally, the Court of Appeals properly deferred to the FERC's factual findings and credibility determinations, which were based upon the testimony of over 70 witnesses (none of whom were sponsored by Petitioners) and over 5000 pages of trial transcript.

REASONS FOR DENYING THE WRIT

I. PETITIONERS RAISE NO ISSUES OF CONSTITUTIONAL SIGNIFICANCE OR PUBLIC IMPORTANCE.

This Court providentially reserves its judicial resources for cases that present issues of constitutional significance or involve matters of overarching importance to the public. In the present case, Petitioners have raised no issues of legal significance or public importance warranting the Court's review of the Court of Appeals' decision.

Although Petitioners strain to suggest constitutional overtones, their efforts fail. Petitioners' allegations relate solely to the administration of an eleven year old order issued by the FERC as part of its implementation of Title I of the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. §§ 3311-3333. In Order No. 23, the FERC established procedures to resolve controversies concerning whether "area rate clauses" authorize collection of the maximum lawful ceiling prices set forth in Title I of the NGPA.[1]

In addition to prescribing ceiling prices, Title I of the NGPA also provided a framework within which ceiling prices would be eliminated gradually for sales of most supplies of natural gas.[2] In 1989, Congress enacted the

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[1] Order No. 23, F.E.R.C. Stats. & Regs. [Regs. Preambles 1977-1981] (CCH) ¶ 30,040 (March 20, 1979). "Area rate clauses" were one of three types of indefinite price escalator clauses permitted to be included in contracts subject to the Commission's jurisdiction under the Natural Gas Act of 1938 ("NGA"), 15 U.S.C. §§ 717-717w. *See* 18 C.F.R. § 153.94(b-1). They are so named because the Commission originally established producer ceiling prices by defined geographic areas. *See Permian Basin Area Rate Cases*, 390 U.S. 747 (1960). When Congress withdrew the Commission's delegated authority to establish ceiling prices and set ceiling prices by statute, questions arose about whether area rate clauses could be sufficient contractual authority to authorize the payment and collection of NGPA prices.

[2] Section 121(a)-(c) of the NGPA sets forth the schedule pursuant to which the sales of over sixty percent of the supplies of natural

Natural Gas Wellhead Decontrol Act, which provides that all residual wellhead price controls will expire no later than January 1, 1993.[3] Inasmuch as Order No. 23 relates exclusively to whether collection of regulated ceiling prices is contractually authorized, that Order has applicability only to the extent that regulated ceiling prices remain in existence. Since all regulated ceiling prices will expire January 1, 1993, Order No. 23 will have no future applicability after that date.[4] Accordingly, the guidance of this Court on the question presented will not contribute to the future administration of a federal statute, nor will it have applicability beyond the limited regulatory issues involved.

There are no cases pending in lower courts that will turn on the resolution of the specific issues involved in this case. The FERC has long since decided every third-party protest case involving area rate clause construction under the standards of Order No. 23, and there are no cases pending in the courts of appeals that involve the application of Order No. 23 principles.

Finally, this case involves no issues of broad public importance. Rather, it is narrowly focused upon discrete matters of contract construction and interpretation involving case-specific facts and credibility determinations.[5]

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gas became price deregulated. 15 U.S.C. § 3331(a)-(c). *See FERC v. Martin Exploration Management Co.*, 486 U.S. 204 (1988); *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd.*, 474 U.S. 409 (1986); *Public Serv. Comm'n v. Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983).

[3] Pub. L. No. 101-60, 103 Stat. 157 (codified at 15 U.S.C. § 3331(f)).

[4] The Fifth Circuit has held that the FERC lacks jurisdiction to construe the terms of contracts that relate to natural gas removed from its NGA jurisdiction. *See Pennzoil I*, 645 F.2d at 380-82.

[5] *See Texas v. Mead*, 465 U.S. 1041, 1043 (1984) (Stevens, J.) (the Court does not "grant a certiorari to review evidence and discuss specific facts."). Petitioners' implication that the Court of

The question presented by Petitioners, therefore, is unworthy of review.

II. THE COURT OF APPEALS APPLIED THE PROPER LEGAL STANDARDS.

Petitioners allege that the Court of Appeals violated the *Chenery*[6] doctrine by deciding the case under a legal standard different from that adopted by the agency and endorsed by reviewing courts. Specifically, Petitioners allege that the Court of Appeals adopted a "gap filling" theory of contract construction, while the agency and other courts purportedly have held that Order No. 23 cases must be resolved solely on the basis of "historic" intent.

Petitioners' position is predicated upon a definition of "historic" intent that finds no support in the law of this case or in general principles of contract law. Petitioners claim that "historic" intent means that contracting parties must have specifically contemplated the possibility that Congress would establish ceiling prices by statute, and have formed a specific intent with respect to that contingency, as the *sine qua non* of proving an entitlement to collect NGPA rates pursuant to area rate clauses.[7] However, neither Order No. 23 nor any judicial precedent

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Appeals' decision somehow imposes a higher price to be paid by customers (*see* Petition at 17), is simply false. The Court of Appeals' decision simply effectuates the mutual agreement of the parties as to what their contracts mean, and thereby affirmed the lawfulness of the price paid. That decision does not, in any manner, impair the contracting parties' ability to amend or to modify their contracts to provide for lower prices. *See generally Mobil Oil Exploration & Producing Southeast, Inc. v. United Distribution Cos.*, 111 S. Ct. 615 (1991).

[6] *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

[7] *See, e.g.*, Petition at 3. Petitioners claim that Order No. 23 provided that area rate clauses would be construed as authorizing collection of NGPA rates if the parties "intended, *at the time of contracting* for their area rate clauses, to provide for Congressionally-set prices." (emphasis in original).

requires the degree of prescience urged by Petitioners. Accordingly, Petitioners' claims are without merit.

A. Order No. 23.

In Order No. 23, the FERC found that nearly all parties to interstate natural gas contracts intended that area rate clauses would authorize the payment and collection of ceiling prices generally, and that they did not intend to restrict the authority of those clauses to prices prescribed by any specific governmental authority.[8] The FERC held that there was no basis in law or regulation to bar effectuation of this generalized intent simply because the nature of the rate setting authority had reverted from the Commission back to Congress.[9] Accordingly, the FERC concluded that, as a matter of contract construction, area rate clauses should be construed as authorizing collection of NGPA rates where the parties mutually averred an intent to authorize payment and collection of the highest price allowed by governmental authority.[10]

B. Fifth Circuit Precedent.

In *Pennzoil I*, the Fifth Circuit affirmed the FERC's use of general contract law to find area rate clauses sufficient contractual authority to collect NGPA prices,[11] but

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[8] Order No. 23, F.E.R.C. Stats. & Regs. at 30,312-313. ("Most sellers of natural gas in the interstate market have taken the view that the intent of parties in agreeing to an area rate clause was to permit escalation to the highest ceiling price permitted by law. Most interstate pipeline purchasers have endorsed this position.").

[9] *Id.* at 30,314.

[10] *Id.*

[11] The Fifth Circuit held that the "FERC reasonably concluded from the contract language and its regulatory and commercial context that it was not unreasonable for the parties to have meant to contract for whatever regulated rate was available, and not necessarily to have intended to limit the *source* of those celings." *Pennzoil I*, 645 F.2d at 389 (emphasis in original).

held that "specific determinations of contractual authority in the protest procedures must take account of and follow any differences with general contract law that the appropriate state contract law may have." [12]

The Fifth Circuit noted the state law axiom that, in construing a contract, courts must give effect to the parties' intent. But the Fifth Circuit left no doubt that substantially more was involved than ascertaining the subjective intent of the parties. Rather, the obligation upon the adjudicative authority is to construe the agreement "by considering the instrument itself, its purposes, and the circumstances of its execution and performance." [13] The Fifth Circuit explicitly recognized that an extrapolation of a general intent—an intent to collect the highest price allowed by law—to an intervening specific circumstance—promulgation of NGPA ceiling prices—would be required:

> Ambiguity easily arises when the contract is applied to its subject matter in changed circumstances. Area rate clauses are certainly ambiguous as applied to the collection of currently available ceiling rates for natural gas. *A contract should be interpreted in light of the changed circumstances to accomplish what the parties intended.*[14]

Thus, the Fifth Circuit concluded that "it was reasonable for FERC to provide for the opportunity to interpret area rate and variant escalation clauses to accom-

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[12] *Id.* at 383-84. *See also id.* at 387 ("the appropriate contract law to apply is the law that would govern the parties' dealings were there no regulation at all of the contract's subject matter.") The Fifth Circuit further noted, however, that because nearly all states have adopted the Uniform Commercial Code, the obligation to follow state contract law would not place an unreasonable burden on the FERC.

[13] *Id.* at 388.

[14] *Id.* (emphasis added).

plish what the parties intended rather than to categorically interpret them literally to the defeat of this intent." [15]

In *Pennzoil II*, the Fifth Circuit reiterated that the ultimate issue in an Order No. 23 protest is contract construction in its broadest sense:

> [T]he central purpose of the hearing before the presiding ALJ is to determine the factual question of intent. Intent, however, is relevant only as it relates to the proper interpretation of the contracts. Once the presumption disappears, the Commission is obligated to construe the contracts to determine whether they authorize NGPA rates or not, taking into account the language of the contracts and *all* the extrinsic evidence of intent presented, including the parties' assertion of mutual intent.[16]

C. Agency Action.

At the hearing of this case before the Administrative Law Judge ("ALJ"), Northern Natural Gas Company and its producer-sellers introduced evidence confirming that their intent under area rate clauses was to authorize the payment and collection of the highest price allowed by law. The ALJ found the testimony of the contracting parties' 70 witnesses credible.[17] Additionally, the ALJ found that the other extrinsic evidence offered by the contracting parties corroborated the testimony of their intent and independently demonstrated that the

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[15] *Id.* at 389-90.

[16] *Pennzoil II*, 789 F.2d at 1141 (emphasis in original). The Fifth Circuit further noted that: '"In interpreting an ambiguous contract, a court does not simply determine the parties' intent; it makes a legal conclusion about the meaning of the contract based on evidence of the parties' intent."' (*quoting Carpenters Amended and Restated Health Ben. Fund v. Holleman Constr. Co.*, 751 F.2d 763, 767 n.7 (5th Cir. 1985)).

[17] *Northern Natural Gas Co.*, Initial Decision, 43 F.E.R.C. (CCH) ¶ 63,015 at 65,150-154 (1988).

area rate clauses at issue should be construed to authorize collection of NGPA rates.[18]

The ALJ expressly rejected Petitioners' claim that contracting parties were required to prove that they specifically foresaw and adopted a specific intent with respect to ceiling prices prescribed by Congress in the NGPA. The ALJ noted that "the Fifth Circuit found an intent to pay NGPA ceiling prices was sufficiently described as one that would 'permit escalation to the highest ceiling price permitted by governmental authority.' " [19] The ALJ further observed that the Court of Appeals had found it sufficiently clear to describe an intent to pay NGPA ceiling prices as one that would " 'allow the contract prices to float to the highest relevant ceiling set by regulatory authorities . . . .' " [20]

The FERC affirmed the findings of the ALJ, specifically including his credibility determinations and his application of state law principles to the evidence before him.[21]

D. Challenged Decision.

In its opinion, the Court of Appeals fully accepted the proposition that the ultimate objective in the administrative proceeding was to construe the contracts according

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[18] *Id.* at 65,158-166. The ALJ found that the parties had introduced evidence showing the commercial context, a course of performance, and a usage of trade.

[19] *Id.* at 65,153 (citation omitted).

[20] *Id.* (*quoting Associated Gas Distributors v. FERC*, 810 F.2d 226, 229 (D.C. Cir. 1987)). Petitioners' claim that the Court of Appeals had previously endorsed their defintion of "historic" intent is false. In *Associated Gas Distributors v. FERC*, the Court of Appeals dealt exclusively with the summary dismissal of third-party protests.

[21] *Northern Natural Gas Co.*, Order Affirming Initial Decision, 48 F.E.R.C. ¶ 61,177 (1989), *reh'g denied*, 50 F.E.R.C. ¶ 61,288 (1990).

to state contract law principles.[22] The Court of Appeals held that the FERC had properly applied state contract law, and further concluded that substantial evidence supported the FERC's findings of fact.

The Court of Appeals rejected Petitioners' claim that the "sole inquiry is into historical intent."[23] Citing the observations of leading scholars of contract law, the Court of Appeals commented that in cases involving unanticipated changes of circumstances, courts construe and enforce contracts according to what the evidence demonstrates would have been the intent of the parties had they considered the occurrence of the specific event.[24] In this discussion, the Court of Appeals more clearly articulated the nature of a fact finder's inquiry under the circumstances presented, and undoubtedly added to the reservoir of scholarly opinion on this aspect of contract law.[25] It did not, however, announce or apply a new substantive decisional standard.

The Court of Appeals applied essentially the same standard enunciated by the Fifth Circuit in *Pennzoil I*

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[22] *See South Dakota Pub. Util. Comm'n v. FERC*, 934 F.2d 346, 350 (D.C. Cir. 1991) (Appendix at 16a).

[23] *Id.*

[24] *Id.*

[25] *See generally* E. Farnsworth, *Contracts* § 7.16 at 520-23 & n.12 (1982) (discussing "gap filling" process); Restatement (Second) of Contracts § 204 (1981) ("[w]hen the parties to a bargain . . . have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court"); Note, *Conflict of Laws—Contracts*, 47 La. L. Rev. 1181, 1184-86 (1987) (discussing "gap filling" measures governing contract interpretation and construction); D'Amato, *Legal Uncertainty*, 71 Cal. L. Rev. 1, 41 (1983) (discussing jurisprudential approaches to contract construction and interpretation); Note, *Oil and Gas—Obligations—The Meaning of "Market Value" In a Gas Lease Royalty Clause*, 57 Tul. L. Rev. 1049 (1983); Speidel, *Restatement Second: Omitted Terms and Contract Method*, 67 Cornell L. Rev. 785, 799 (1982).

and *Pennzoil II*. The Court of Appeals agreed with the FERC that the parties had introduced overwhelming factual evidence supporting the conclusion that the area rate clauses in their contracts should be construed as authorizing NGPA prices. Whether the Court of Appeals viewed the inquiry as applying a generalized intent to a specific event, or hypothesizing actual intent with respect to an intervening event based upon other evidence of intent, is a distinction without a difference.[26]

Even if the erroneous argument that a change in the description of the inquiry is a change in the adjudicatory standard had any validity, the Court of Appeals committed no error. The *Chenery* doctrine is aimed at assuring that initial administrative determinations are made with relevant criteria in mind and in a proper procedural manner.[27] Here, the Court of Appeals concluded that the FERC indeed had considered the relevant criteria and that the agency came to the conclusion to which it was bound to come as a matter of law.[28]

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[26] In its opinion accompanying the denial of rehearing, the Court of Appeals noted that courts frequently use the language of historic intent where the actual analysis actually involves hypothesized or reconstructed intent. *South Dakota Pub. Util. Comm'n v. FERC*, 941 F.2d 1233, 1234 (D.C. Cir. 1991) (Appendix at 5a). To the extent that the Court of Appeals quibbled with the nomenclature used either by the FERC or the Fifth Circuit, the focus of the Court of Appeals' comments was upon the description of the inquiry as opposed to the nature of the ultimate legal issue.

[27] *Massachusetts Trustees of Eastern Gas and Fuel Assocs. v. United States*, 377 U.S. 235, 247 (1964).

[28] *See SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943) (citing the settled rule that lower court decision must be affirmed if the result is correct although the lower court relied upon the wrong ground or gave a wrong reason). *See also United Video, Inc. v. FCC*, 890 F.2d 1173, 1189-90 (D.C. Cir. 1989) ("*Chenery* reversal is not necessary where, as here, the agency has come to a conclusion to which it was bound to come as a matter of law, albeit for the wrong reason, and where, as here, the agency's incorrect reasoning was

III. PETITIONERS' REMAINING CLAIMS ARE FRIVOLOUS.

A. The Court of Appeals Properly Deferred to the Factual Finding of the Agency.

Petitioners inaccurately assert that the Court of Appeals made "its own fact-finding under its newly devised standard." [29] The Court of Appeals did not undertake any new fact-finding in this case. Rather, the Court of Appeals reviewed the administrative record and determined that the evidence was overwhelmingly sufficient to affirm the FERC's decision. Far from invading the province of the administrative agency, the Court of Appeals was faithful to its statutory obligation to give conclusive effect to the FERC's findings of fact where they are supported by substantial evidence.[30]

B. The Court of Appeals Fully Respected Petitioners' Due Process Rights.

As a corollary to their claim that the Court of Appeals adopted a new substantive standard, Petitioners assert that the Court of Appeals violated their constitutional rights to notice and due process. This claim is baseless.

Order No. 23 and the Fifth Circuit's *Pennzoil* decisions put Petitioners on notice that the ultimate issue in the case was one of contract construction, and that state contract law principles would supply the adjudicative standard. Petitioners had ample, if not excessive, opportunity to present evidence on the issue at bar. Petitioners simply failed to do so and it is time to draw the curtain

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confined to that discrete question of law and played no part in its discretionary determination.").

[29] *See* Petition at 6.

[30] *See* 15 U.S.C. § 717r(b) ("The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."); 15 U.S.C. § 3416(a)(4) (same).

of finality on this case, which has nearly outlived the statute upon which the controversy is based.

CONCLUSION

The Court of Appeals' opinion clearly indicates that the court addressed the nature of the inquiry into the parties' intent solely to "put[] into proper perspective a number of points raised by petitioners' counsel that assume the sole inquiry is into historical intent."[31] The Court of Appeals neither announced a new standard, altered an existing standard, nor invaded the province of the administrative agency. The Court should therefore deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Dated: January 17, 1992

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[31] *South Dakota Pub. Util. Comm'n v. FERC*, 934 F.2d at 350 (Appendix at 16a).

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APPENDIX

APPENDIX

A. *Parties*

Petitioners omitted Exxon Corporation from the list of parties appearing below in the Petition for Writ of Certiorari. All other parties appearing below and in this Court are listed in the Petition. The following lists set forth the name of the publicly-owned parents, subsidiaries, and affiliates of the Producer-intervenors joining in this Brief.

American Trading & Producing Corp.

Crown Central Petroleum Corp.

ARCO Oil and Gas Company,
a division of Atlantic Richfield Company

85819 Canada Limited
AA Antilles Coal N V
AAPSS90, Inc.
AAPSS91, Inc.
AAPSS92, Inc.
AAPSS93, Inc.
AAPSS94, Inc.
Agro Internacional, S. De R.L. De C.V.
Alyeska Pipeline Service Company
ARCO Chemical Company
ARCO Solar Nigeria Ltd.
Badger Pipeline Company
Black Lake Pipe Line Company
Blair Athol Coal Pty, Limited
Carbones Del Guasare, S.A.
Colonial Pipeline Company
Compania De Petroleo Ganso Azul, Ltda
Cook Inlet Pipe Line Company
Dalrymple Bay Coal Terminal Pty Ltd.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.
Guasare Coal International N.V.

Iricon Agency Ltd.
Kenai Pipe Line Company
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company
Lyondell Petrochemical Company
Nordisk Mineselskab A/S
Platte Pipe Line Company
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company

Chevron U.S.A. Inc.

Canyon Reef Carriers, Inc.
Chevron Capital, N.V.
Chevron Capital U.S.A., Inc.
Chevron Corporation
Chevron Investment Management, Inc.
Chevron Oil Finance Company
Felix Oil Company
Gulf Oil Finance, N.V.

CNG Producing Company

CNG Producing Company is a wholly-owned subsidiary of Consolidated Natural Gas Corporation.

EXXON Corporation

Exxon Capital Corporation
Exxon Capital Holdings Corporation
Exxon Capital Ventures, Inc.
Exxon Credit Corporation
Exxon Financial Services Company Limited
Exxon Funding B.V.
Exxon Pipeline Company
Exxon Shipping Company
Exxon Supply Company
Imperial Oil Limited
Interhome Energy, Inc.
Scurry-Rainbow Oil Limited

Grace Petroleum Corporation

W.R. Grace & Co.
Grace Energy Corp.
Del Taco Restaurants, Inc.

Marathon Oil Co.

USX Corporation
Texas Oil and Gas Corp.

Maxus Exploration Company

Maxus Exploration Company (formerly Diamond Shamrock Exploration Company) is a wholly-owned subsidiary of Maxus Energy Corporation, a publicly-owned corporation. The affiliate (not wholly-owned by Maxus Energy Corporation or a wholly-owned subsidiary thereof) of Maxus Exploration Company is Diamond Shamrock Offshore Partners Limited Partnership.

Norfolk Energy Inc.

Norfolk Energy Inc. (formerly Tricentrol United States, Inc.) is a wholly-owned subsidiary of Norfolk Holdings Inc. Norfolk Energy Inc., which has no publicly traded affiliates, explores, produces, and sells oil and gas and other hydrocarbons primarily in the Bear Paw area of Montana.

OXY USA Inc.

OXY USA Inc. is the successor to Cities Service Oil and Gas Corporation and Cities Service Oil Company. OXY USA Inc. is a wholly-owned subsidiary of Occidental Petroleum Corporation, which is a publicly-owned corporation. In addition, OXY USA Inc. is an affiliate of IBP Inc. which is also publicly owned.

Phoenix Resources Company

The Phoenix Resources Companies, Inc.

Texaco Inc.

Texaco Capital Inc.
Texaco Capital N.V.
Texaco International Finance Corp.
Texaco Inc.
Texaco Mexicana S.A. de C.V.
Texaco Togo
Texaco Nigeria Limited
Texaco Ghana Limited
Refineria Texaco de Honduras S.A.

Texas International Petroleum Corp.

The Phoenix Resources Companies, Inc.

The Producer-intervenors joining this Brief primarily are engaged in the exploration for, and development, production, and sale of, natural gas for resale in interstate commerce.